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SAC Brass Seems Comfortable With Decision to Prosecute Cooke

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Top officers of the Strategic Air Command testified yesterday that their sense of military justice was in no way offended when they decided to prosecute 2d Lt. Christopher Cooke for espionage after obtaining his confession under an ostensible grant of immunity.

The generals' testimony was followed by chief defense counsel F. Lee Bailey's final plea at the preliminary hearing for dismissal of all charges against Cooke.

The theme of Air Force efforts to court-martial Cooke seemed to be "you don't have to keep your word to a spy" and was barely protested by Bailey in a 55-minute summation.

Bailey made plain that he offered no excuses for the conduct of Cooke, 26, whom he described as "a reasonably well-educated young man but not terribly mature."

Bailey urged military judge Lt. Col. David Orser to keep in mind the words of Supreme Court Justice Felix Frankfurter: "The measure of a culture must be the degree of protection it provides the worst of its citizens."

Air Force prosecutors are to sum up their case this morning. Orser must decide whether to try the spy case on its merits with a full-dress court-martial or dismiss it.

The final prosecution testimony came from Gen. Richard H. Ellis, recently retired chief of the Strategic Air Command, who aggressively defended his insistence on pursuing charges against Cooke.

Ellis said he did not think he was "duty-bound to do anything" in the controversial case beyond signaling his intention, in a top-secret message to the Pentagon last May 10, to prosecute Cooke.

The message, which called Cooke a "traitor," was addressed to the chairman of the Joint Chiefs of Staff and the Air Force chief of staff with a copy to Defense Secretary Caspar W. Weinberger. It was composed the day after Cooke had started making a full confession to Air Force investigators who

promised that he would not be prosecuted if he simply told the truth.

Under cross-examination by Bailey, Ellis testified that he did not think Cooke had been advised of his rights at that point, but he heartily endorsed continued interrogation.

"I am advised . . . that we have no confession we can legally use," Ellis informed the Pentagon in his message. " . . . From this point on, future interrogation of Cooke should center on establishing as strong and prosecutable a case as possible."

Bailey protested that Cooke and the military lawyer hurriedly assigned May 9 to represent him, were convinced that SAC had promised no charges would be brought if Cooke would detail all of his contacts here at the Soviet Embassy.

"Would you explain to me," Bailey asked Ellis, "how you conduct an interrogation that enhances prosecution when no advisement of rights has been given?"

"I have no idea. I never thought about it," responded Ellis, a 1949 law school graduate. Ellis recalled, however, that inquiries were being made of the Justice Department about that time "to see if the confession could be used."

"Don't you understand that's almost an instruction to flout the law?" Bailey asked Ellis in exasperated tones.

"No, I don't understand that," Ellis said.

"Not even today?" Bailey said.

"No," Ellis said.

The defense brought up another dispatch that the Air Force Office of Special Investigations, which conducted questioning of Cooke, had sent to SAC headquarters in Omaha, Neb., May 11. It explicitly said that interview of Cooke was continuing "with his full cooperation under agreed-upon conditions."

"I don't remember seeing that message," Ellis testified.

Other SAC officers who appeared earlier in the day were the former vice commander, retired Lt. Gen. Lloyd R. Leavitt, and the chief of staff, Maj. Gen. Andrew Pringle Jr.

Leavitt said he learned by May 13 that "clearly the OSI and SAC were not singing

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